

PORT & RESOURCE RECOVERY DEPARTMENT



2561 SOUTH BROADWAY
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DEAN R. HAEN

DIRECTOR

PROCEEDINGS OF THE BROWN COUNTY HARBOR COMMISSION

A meeting was held on **Monday, December 8th, 2014**

Brown County Resource Recovery Facility, 2561 S Broadway, Green Bay, WI

1) The meeting was officially called to order by Commission Craig Dickman at 11:32 am.

2) Roll Call:

Present: President Craig Dickman
Commissioner Bernie Erickson
Commissioner Mike Vizer
Commissioner Hank Wallace
Commissioner John Hanitz
Commissioner Tim Feldhausen
Commissioner Ron Antonneau (11:35am)

Also Present: Dean Haen, Brown County P&RR
Mark Walter, Brown County P&RR
Jim Haese, LaFarge
Rob Benninghoff, Wisconsin Public Service
Don Johnston, U.S. Venture, Inc.
Scott Selby, RGL
Jay Grosskopf, Boldt/Fox River Clean-up
Troy Gawronski, Foth/Fox River Clean-up
Richard Feeney, Tetra Tech/Fox River Clean-up

Excused: Vice-President Tom Klimek
Commissioner Bryan Hyska

3) Approval/Modification – Meeting Agenda

A motion to approve the agenda was made by John Hanitz and seconded by Hank Wallace. Unanimously approved.

4) Approval/Modification – October 13, 2014 Meeting Minutes

A motion to approve the minutes of October 13, 2014 was made by Hank Wallace and seconded by John Hanitz. Unanimously approved.

5) Introductions of Tim Feldhausen and Mike Vizer to Harbor Commission

There are two new members to the Harbor Commission, Tim Feldhausen and Mike Vizer. This will return the Harbor Commission board to full force and strength with nine (9) board members. Harbor Commissioner President Craig Dickman welcomed the two new Commissioners and asked everyone to do a brief introduction.

Mike Vizer works for St. Mary's Cement as the terminal manager and also head of security for terminals throughout the Great Lakes. Mr. Vizer is looking forward to being a part of the Harbor Commission to share ideas and learning to make the board a success and move the Port into the future.

Tim Feldhausen works for Simon & Feldhausen Law firm as a practicing attorney in business and real estate law. Mr. Feldhausen has lived in the area for about nine years and is active in economic development issues through Advance (Greater Green Bay Chamber). In his past military experience, he had driven an aircraft carrier. Coming from a Navy background, he is very thankful that he has been appointed because he is fascinated by the port and harbor facilities here in Green Bay.

6) Renard Island Easement – Request for Approval

Dean Haen explained the draft easement enclosed in the agenda packet. This is a requirement from the Corps of Engineers. Currently a temporary easement for ten (10) years is in effect with four (4) to five (5) years remaining providing access to Renard Island by Sauk Rd. President Dickman has met with the City of Green Bay representatives including the Mayor, the Mayor's Chief of Staff and the Director of Public Works. At the last session, it was verbally agreed by the Mayor, President Dickman and Director Haen that number two (2) on the easement shall read:

2. End-Use of Renard Island. The County agrees the end-use of Renard Island will be recreational use compatible with the Bay Beach Amusement Park area.

This ensures the City and County's mutual interest in maintaining and developing the area including the island for passive and active recreational activities. The easement language has been forwarded to the City for approval and staff requests Harbor Commission action on the easement. Haen added that if this is approved, staff and President Dickman be given the ability to make minor modifications without changing the intent or content should the City have any changes.

Commissioner Antonneau suggested any significant changes to the easement should come back to the Harbor Commission and to approve the easement as long as the City approves the easement in the near term. If the City does not approve it, plans should be made to take out the causeway access to the island.

Commissioner Wallace questioned Commissioner Antonneau what he meant by taking out the causeway and who would fund the cost. Dean Haen answered that the causeway is owned by the Corps of Engineers and if permits and easements are not secured by Brown County, ownership could not be transferred to Brown County and the Corps of Engineers would have to remove the causeway.

Commissioner Dickman added that the Corps of Engineers is putting \$200,000 into the box culvert and the department is making modifications including the fish spawning reef and fish-sticks habitat. Both the County and the Corps of Engineers are making investments into this project. The project was originally permitted as a temporary structure even though several groups in the community suggested it become permanent. A permanent causeway retains access to the island and enables development of human use opportunities for the island in the future. The Commission and staff have always viewed this as substantial causeway and leaving it would be desirable. There have been concerns by President Dickman of entering into the real estate business. In order for the causeway to remain as a permanent structure several things need to happen; causeway modifications that the US Corps of Engineers is making at their expense for the box culvert and lowering the height of the causeway, the County modifications and expense installing the fish cribs and rock reef and securing a permanent easement on Sauk Road. All three requirements need to occur or the causeway would not be meeting the state and federal requirements and would require the removal of the causeway as a temporary structure.

Commissioner Vizer questioned if this sounds like something that the City will approve based on conversations. Commissioner Dickman answered that clearly it was important that the modification of the easement included recreational use compatible with the Bay Beach Amusement Park area for the City to sign the easement.

A motion was made to approve the Renard Island Easement as long as the City approves it in ninety (90) days. If the City does not approve it, Brown County will communicate to the Corps of Engineers all requirements are unable to be secured and plans should be made to take out the causeway access to the island. Motion made by Ron Antonneau and seconded by Craig Dickman. Unanimously approved.

7) Renard Island Closure – Update

Dean Haen explained that the Corps of Engineers has removed the old culvert and put in the new required box culvert, they will also be lowering the causeway height completing Corps responsibilities. Left over stone will be stored for Brown County to use in installing the rock reef.

In October, the Corps of Engineers told the department that a permanent easement was needed. Three weeks later a letter came from the Corps of Engineers that the department needed a Lakebed Grant for the land underneath the causeway. Staff has been struggling to meet these eleventh hour requirements, resulting in conversations with Corporation Counsel, outside counsel and a conference call with the Corps attorneys and real estate people.

The department spent almost one year securing a Chapter 30 permit from the Corps and State of Wisconsin for that causeway to be modified. Some of the work is being completed by the Corps of Engineers. The Corps is now saying that the Chapter 30 permit may be revocable and that there are no real estate guarantees after the work is completed. A Lakebed Grant is an act of the State Legislature is not revocable. For the department to secure a Lakebed Grant, staff would have to create a legal description, write a draft bill, have an Assemblyman and a Senator introduce the bill and have the Legislature pass the bill. If the department had known this would be a Corps requirement in the beginning, the Lakebed Grant would have been pursued and likely the current necessary modifications and expense as part of the Chapter 30 would not have been necessary.

It is troubling that the Corps is now coming with another change. Staff has engaged Michael Best & Friedrich LLP for legal review of the revocability of both a Lakebed Grant in comparison to a Chapter 30 permit. Staff believes the Chapter 30 is not revocable if all conditions are met. At the very least even the Lakebed Grant, as an act of Legislature, is revocable by another act of the Legislature. The Corps real estate and attorneys continue to be a reoccurring problem. In this case, in the eleventh hour of a project, they come up with a new requirement and send it in writing. Once in writing there is a major reluctance from the Corps to change position even when obvious. Now this issue is a new problem and may result in removal of the causeway. In addition, pursuit of a Lakebed Grant will require unnecessary use of political capital and another year and a half of staff time.

Commissioner Antonneau questioned if any past precedence can be cited with other confined disposal facilities that do the same thing such as over in Detroit. Haen answered that at this point, he did not go down that path. Haen's initial thought is to find another path moving forward that does not involve a Lakebed Grant.

Commission Dickman commented that he and Mr. Haen had discussed this and it is time sensitive. Mr. Dickman supported the Michael Best & Friedrich LLP expense. The Lakebed Grant request does not seem to be reasonable with the County having no power in executing documents that require action involving a third party entity in this case the State of Wisconsin. Commissioner Dickman believes the department cannot comply; the department has met all of the obligations of the Chapter 30 which is as permanent as a Lakebed Grant. The department only has so much political capital as an entity and there are some very difficult issues facing the harbor over the next few years. He feels that the Commission should not chase something that is not core to what the Commission does and the causeway is not something core to what the Commission does, it will not change economic development on the river and it will not change the ability to move commerce. Commissioner Dickman is extremely reluctant for the Commission to utilize the leverage, relationships or political capital that exist to pursue something that is not core to the Port's mission. Mr. Dickman's points of view are acknowledging the receipt and respond that the department can not comply and include the Michael Best & Friedrich LLP legal review.

No time frame for a response to the letter was issued. The causeway modification work is proceeding to complete the Chapter 30 requirements. There is also a Wisconsin Department of Natural Resources (DNR) submittal for closure of Renard Island which requires the Corps provide the County with the appropriate closure documentation.

8) Noble Petro Dockwall Lease Assignment – Update

Dean Haen mentioned that the enclosed document within the agenda packet is purely administrative and the consent and eventual assignment do not need Commission approval. In 2004, the department had prepared a harbor assistance grant for U.S. Oil for the western shore facility which is now Noble Petro. Since 2004, the dockwall has changed ownership several times. A consent letter was prepared by Noble Petro that Brown County is agreeing to have the dockwall lease assigned from Noble Petro signed back to U.S. Venture. U.S. Venture will be taking ownership of that property and a number of other Noble Petro properties. This document is for informational purposes only. All grants requirements, lease payments, terms and conditions will be assigned to U.S. Venture over the course of this winter.

Commissioner Dickman mentioned that U.S. Venture has been an active member of the Port and has moved substantial goods into the Port since their dockwall has been improved. This is a positive movement considering all the port operations in total.

Dean Haen has reached out to Don Johnston, Mike Koel, Chris Lamirande, all of U.S. Venture, to communicate that Noble Petro has a \$4.6M grant that they were successful in receiving from the state at 80% funding. Understanding that U.S. Venture already has a petroleum product facility on the west shore, he is still encouraging US Venture to consider all options of utilizing the grant including moving nontraditional products. This grant is time sensitive but could receive a time extension. Transfer of ownership would be a justified reason to extend the grant.

9) Fox River Environmental Dredging Project - Update

Commissioner Dickman stated that the Fox River Environmental Dredging Project is going to be a standing item on future agendas and will be brought to the top after the approval and modification of minutes so that attendees may leave after the discussion.

Commissioner Antonneau questioned Mr. Haen if a lot of the terminal operators were not aware of the facts related to the project's capping and dredging. Mr. Haen explained that a public meeting was held in November 2014 at the Public Neville Museum. With the invite letter, a Frequently Asked Questions fact sheet was included to try and help educate the property owners. The meeting turnout was 30 to 40 attendees. At the meeting, Mr. Dickman talked about the big picture of the harbor and the future, the Chamber talked about business and then the Project Team spoke about the specifics of capping, types of caps and timing if implementation. At the end of the meeting, it was decided for the duration of the project that there would be a standing agenda item on the Harbor Commission agenda. This way if citizens have issues, they have a conduit to come to the Harbor Commission to say they are having issues with the project or answer any questions. Staff is in the process of sending a letter to property owners summarizing the outcomes of that meeting and informing them there will be a standing item at the Harbor Commission meetings and that they are more than welcome to come with any questions. The property owners may use us as a clearing house to reach other property owners as well.

Commissioner Dickman stated that he feels the department and board has made a lot of progress raising awareness, collaboration with the Chamber, creating dialog with the Project Team. The whole group came together and had an open conversation with great dialogue which created the forum. The Commission's role is to facilitate sharing information, educating and generating discussion. As discussion takes place in the community the standing item will be a forum discussion. The educational meeting was a good start, the process in place helps and will continue to have open dialogue.

A motion was made to suspend the rules to hear from interested parties to speak on the Fox River Environmental Dredging Project was made by Ron Antonneau and seconded by John Hanitz. Unanimously approved.

Jim Haese, Lafarge Corporation, 125 9th Street Green Bay, WI 54304.

Mr. Haese mentioned that he was at the public meeting held at the Neville Museum and thought it was very informative and learned a couple of different things like who was going to be responsible for the cost, what the landowners are responsible for and if there was a potential cap on Lafarge's property the rights that they have. He also appreciates that all the property owners and terminals have a source to come to.

Don Johnston, U.S. Venture, 425 Better Way Appleton, WI 54915.

Mr. Johnston mentioned that they have a meeting set up with Tetra Tech in a week down at the facilities in Appleton and hoping to negotiate something that is reasonable between both parties.

A motion was made to return to regular session by Ron Antonneau and seconded by John Hanitz. Unanimously approved.

Commissioner Antonneau commented that hearing these comments will help everyone involved.

Commissioner Dickman also added working with the Chamber is really important with working with other groups in the community to expand on economic development for the whole region.

10) Daylight Restriction by Western Pilots Association – Update

Mr. Haen and Mr. Walter had meetings with freight forwarders, Ship Agents and other businesses in Chicago during October. An outcome of a meeting with a Ship Agent was learning about the Port of Green Bay being under a daylight restriction by the Western Pilots Association which affects the costs for U.S. Venture and other ocean-going vessels. A captain can operate a U.S. Great Lakes vessel or Canadian Great Lakes vessel anywhere in the Great Lakes, but salt water vessels are operated by pilots who have imposed a daylight restriction. When an Ocean going vessel is flagged other than U.S. or Canadian, a pilot is required to navigate the vessel. Reasoning for a pilot is because the Great Lakes are unique/dangerous waters and need experienced pilots to navigate the Great Lakes. With the daylight restriction, a vessel may not enter or leave the Port during darkness. These vessels operate at \$2,500 an hour. That is a cost that negatively impacts commerce. A company may not risk the cost of a potential six (6) hour layover waiting for daylight and instead have the commerce shipped to Milwaukee and trucked to Green Bay or railed. After returning from the meetings, Mr. Haen reached out to the Western

Pilots Association and wanted to learn why the Port of Green Bay was under this restriction. The restriction is also at the discretion of the pilot. Sometimes the pilot will take the ship in or out after dark. U.S. Venture has to factor in the costs of a delay. Staff is trying to find an avenue to get the restriction lifted. The only other Port that has a daylight restriction is Bay City, MI on the Great Lakes.

Commissioner Dickman asked if there was any way to request that the Western Pilots Association change the policy from one which is a blanket communication to the marketplace to communicate some more moderate status, or make up a new status that says limited nighttime access selected by pilot instead of blanket restriction. Have it say limited, the company could look for a willing pilot.

Mr. Haen stated that if the Western Pilots Association said no to lifting or limiting the daylight restriction, the only other route is making a claim to the U.S. Coast Guard, who regulates the pilots.

Commissioner Dickman suggested the Commission make a formal request to the Western Pilot's Association saying that we believe that Port of Green Bay has been negatively impacted by the daylight restriction and that we would respectfully request that they review and consider creating some limited restrictions or opportunities for organization to contract with pilot's, who are willing to do so, to continue the development of the Port and protect the economic development. That way if there should ever be a discussion with the U.S. Coast Guard later it shows communication was trying to be facilitated and that compliance is taking place. This request would include the Harbor Commission.

Commissioner Feldhausen asked if these pilots are called harbor pilots or barge pilots and are they required to ride all the way down through the Door Peninsula into Green Bay or at the Harbor. Mr. Haen answered that there are three Great Lakes pilot districts and as the vessel moves from the St. Lawrence Seaway to Duluth a total of three different pilots will get on and off at different locations throughout the Great Lakes. Commissioner Hanitz mentioned he has seen the pilots come out on a motorboat to swap pilots.

Commissioner Vizer asked who this was governed by and if this was CFR/legal law that is required to do this. Mr. Haen answered the US Coast Guard regulates this. Sometimes it costs \$50,000 for pilots to take a vessel in and out of the Great Lakes.

Commissioner Antonneau asked who employs these pilots. Mr. Haen answered the Western Pilots Association which was established by the Code of Federal Regulations governed by the Coast Guard, but essentially operates as a legal monopoly.

Commissioner Dickman suggested this is a worthy item, keep continuing dialogue and report developments at subsequent Commission meetings.

Commissioner Wallace suggested checking with the new U.S. Coast Guard Captain in Milwaukee on this topic.

11) Strategic Planning Subcommittee – Update

Commissioner Wallace commented that a couple of subcommittee meetings have taken place where the terminal operators had given their input. It has been made very obvious to the committee that five years is a stepping stone for what it is the committee needs to start thinking about. A couple of things have come up recently including the depth of the harbor where the project was authorized but no money was never allocated to get it to 27 feet. Another topic came up today where this particular harbor is being affected by international shipping because of the daylight restriction where pilots are charging fees and setting hourly restrictions. As things are being put together for the upcoming phase issues keep popping up (ex. Renard Island Causeway). One thing is the committee needs to be prepared that things are going to continue popping up. The other thing economically, the committee needs to look at the feasibility of turning this Port around to how it was 75 to 100 years ago, an equal import/export port. Right now economically, it is pretty much an import port.

Commissioner Dickman explained that every five years the Harbor Commission publishes a new Strategic Plan, not that it only looks at five years but it is updating what the long term outlook is. The last strategic plan was crafted in 2010 and the next one is designed to be published and acted upon by this group in 2015. There are three members of the subcommittee that oversee the creation and hard work behind the scenes of the strategic plan. Tom Klimek, Harbor Commission Vice-President who also works for the Escanaba & Lake Superior Railroad. Mr. Klimek brings more than 30 years of product movement and a government affairs background. Bryan Hyska, Harbor Commissioner, works for Associated Bank. Mr. Hyska brings a financial outlook and a point of view that has been very valuable. Hank Wallace, Harbor Commissioner, has had many years on the Commission as well as with the U.S. Coast Guard. Next meeting there will be an update on when the first draft will be submitted to the Commission.

Mr. Haen mentioned the outcomes of the meeting held a week prior was various ways to accomplish the plan, take it in pieces, look at the vision and mission and keep updating the Commission.

12) Cat Island – Update

Mark Walter discussed that the Cat Island Advisory Committee met last week and the main issue on the island has been public access. There was a strong debate. Several birders showed up and there was a 45 minute discussion. Mr. Walter is working with the Julia Noordyk, UW Sea Grant Institute on a public access plan on how to allow or not allow people out there. The construction is done for the season. Dredging and filling of McKloskey Island is now 30% full by surface area with very sandy material. The department is having the material tested because it may be useful as a commodity in the future. The access is now closed completely with two gates. The second gate is in the water and extends 20 feet into the water on both sides prevents any pedestrian access whatsoever. The point of view expressed by the birding community is they should be allowed access as they do not disturb anything. That is not a way a facility can be run as there needs to be no access or equal access for everyone. Currently, this is a Corps of Engineers CDF so it is an active facility. Over the next couple of months, the Corps will be

posting signs saying, "Danger, Keep Off" along the entire island including the legs. In the paper, there was an annual notice to snowmobilers.

Mr. Haen mentioned public access is an issue and believes the message came across very clearly as no public access with the long term hope of hopefully slowly opening access. There is so much interest and the committee cannot discriminate against the birders vs. one who wants to walk their dog, hunt, fish, etc. Right now there is no public access until otherwise.

Commissioner Antonneau asked who is liable for trespassers. Mr. Anntoneau suggested that when they trespassers on their facilities, they notify the authorities to be on record in case something happens.

Mr. Walter commented that there was a meeting held in November with the Cat Island Advisory Committee and Law Enforcement in terms of what and how access would be enforced. There are no posted "No Access" signs out there at this point but that is something the Corps is doing. It is a Corps facility so the liability falls on them. Cat Island will be Brown County's in 20 to 30 years. The Sheriff's Department and Wisconsin Department Natural Resource Wardens are well aware of the access points and issues on the island, they will enforce and ticket.

13) Director's Report

Mr. Haen brought up the area by St. Mary's Cement that the Boatyard property is located near is going to the Sheriff's auction. Conversations have taken place on what that means. The County is not in a position to bid at an auction and the County Board is the only entity that is approved to purchase a property. Mr. Haen had communicated with Nicolet Bank. If the property falls back to the bank, the bank may then be interested in working with the County to determine our interest. The auction is being held on the December 17th and Mr. Haen will attend to observe. He has spoken with Commissioner Hyska, being a banker, regarding the process and for assistance understanding the financial implications.

Commissioner Dickman stated that there are some port funds are set aside to facilitate property acquisition if felt it is in the Port's best interest.

14) Audit of Bills – Request for Approval

A motion to approve the Bills was made by Hank Wallace and seconded by Mike Vizer.
Unanimously approved.

15) Tonnage Report – Request for Approval

The overall highlights of Novembers tonnage report is the Port tonnage is 1% higher than last year even factoring the loss of the first four weeks at the start of the season and likely will lose some time at the end of this shipping season. The two million ton threshold has been met which indicates a healthy shipping season.

A motion to approve the Tonnage Report was made by Tim Feldhausen and seconded by John Hanitz. Unanimously approved.

16) Such Other Matters as Authorized by Law

No other matters as authorized by Law.

17) Adjourn

A motion to adjourn was made by Mike Vizer and seconded by Hank Wallace. Unanimously approved. Meeting adjourned at 12:47 pm.

Craig Dickman, President
Harbor Commission

Dean R. Haen, Director
Port & Resource Recovery Department